2013 IL App (1st) 120336-U

FIFTH DIVISION
February 21, 2014

No. 1-12-0336

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 10646
	)	
STANLEY ANDERSON,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Taylor concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant forfeited second-prong plain error review of fitness issue, and his cursory argument regarding defense counsel's failure to request a fitness hearing results in forfeiture.

¶ 2 Following a bench trial, defendant Stanley Anderson was found guilty of aggravated domestic battery and sentenced to 10 years' imprisonment. On appeal, defendant does not contest the sufficiency of the evidence to sustain his conviction. Rather, he contends that the trial court erred by failing to *sua sponte* conduct a fitness hearing where there was a *bona fide* doubt of his fitness to stand trial, and that trial counsel was ineffective for failing to request a fitness hearing.

¶ 3 Defendant was arrested on June 19, 2011, and subsequently charged with two counts of aggravated domestic battery, three counts of aggravated battery, and one count of domestic battery based on an altercation with his ex-girlfriend, Lavergne Johnson, at her apartment on June 12, 2011. At the preliminary hearing that resulted in these charges, defense counsel informed the court that defendant was not cooperating with her and that he wished to address the court directly about the State's request for an order of protection. Defendant stated that on the date of the alleged incident, he was "released from the hospital under all type of drugs," and that Johnson was lying about the nature of their relationship and the altercation. The court acknowledged defendant's frustration with the charges and explained that this was a preliminary hearing and not a trial. When the court granted the order of protection, defendant walked out of the courtroom.

¶ 4 On July 25, 2011, the court appointed the public defender to represent defendant and counsel requested, and was granted, a Behavioral Clinical Examination (BCX) for defendant "as well as a Court order that he immediately be seen by the Cermak physicians. He has indicated to me that he suffers from bipolar disorder." The court advised defendant that he could be tried and sentenced *in absentia* for not coming back to court, and, after further clarification by the court, defendant stated that he understood.

¶ 5 At the next status date, August 25, 2011, an unidentified speaker, presumably the complainant, asked the court for permission to speak and was directed to consult the assistant State's Attorney. While the parties attended to discovery matters, defendant interrupted and complained about the lack of communication from defense counsel. Defendant threatened to strike one of the deputies and was removed from the courtroom. The case was passed, and when it was recalled, the court stated that defendant would not be brought into the courtroom because "[f]or whatever reason, he won't calm down." When the court asked about the results of defendant's BCX, defense counsel tendered a copy of the report to the court, stating that

defendant had been found fit to stand trial. Counsel then withdrew her request for an evaluation of defendant's competence to waive his *Miranda* rights and demanded trial.

¶ 6 The common law record includes a letter to the court, dated August 10, 2011, and filed on August 25, 2011, from Dr. Erick Neu, the psychologist who evaluated defendant, stating that in his opinion, defendant was fit to stand trial. Dr. Neu opined that defendant was "not suffering from a mental condition that would compromise his ability to understand the nature of the proceedings against him or to assist in his defense" and "not presently prescribed any psychotropic medications." Dr. Neu added that he was unable to render an opinion regarding defendant's sanity at the time of the alleged offense because defendant "did not cooperate sufficiently" in that he provided minimal and contradictory information on the issue. Finally, Dr. Neu referred the court to the basis of his opinions in his "Psychological Summary," which is noticeably absent from the record on appeal.

¶ 7 On the date set for trial, the matter was continued to September 16, 2011, then reset for trial on October 5, 2011. When the State informed the court that it was not ready for trial, defendant expressed concern with the delay and the status of a court order for his medications in the following colloquy:

> "THE DEFENDANT: There was some papers that was suppose to have been received in the court for me receiving my medicine. I haven't been receiving no medicine and anything and I know I'm suffering.
>
> THE COURT: Hang on a second.
>
> Do we have his mitt?
>
> THE DEFENDANT: These people won't talk to me.
>
> THE COURT: Hold on. I'll check on the medical stuff. I have no problem helping you with that. I can do that for you. I know we had a BCX done.

***

If, in fact, I have to sign another order for you to be examined–

THE DEFENDANT: No, no, you Honor. I want you to sign that we can go to trial.

THE COURT: I can't.

***

THE DEFENDANT: *** They free whales. They free dolphins. What about me? I want to be free for something I didn't do.

THE COURT: I know you do, and we are going to get you there as soon as we possibly can.

I don't know what–what is your medical ailment? What is wrong with you?

THE DEFENDANT: I'm bipolar. That's what I am.

THE COURT: Well, we have you examined by the behavioral–

THE DEFENDANT: And I have my evaluation, but you don't want to see them things. I was going [to] mail you one.

THE COURT: Mail [me] what?

THE DEFENDANT: My evaluation.

THE COURT: Well, if your lawyer–I have your evaluation from the psychiatric institute.

THE DEFENDANT: You do?

THE COURT: Yes, I do. I'm entitled to see that.

What I'll do, what I'll ask, if the Public Defender to prepare an order–I don't believe he needs to be BCX'd again–but if you refer to Cermak.

MS. FRISCH [assistant public defender]: Yes.

THE DEFENDANT: What was that?

THE COURT: That was that original examination.

THE DEFENDANT: Well, the doctor came and saw me the other day.

THE COURT: Did he?

THE DEFENDANT: Yes, he did. Unfortunately. When he came and saw me and asked me what happened and I explained to him by he not putting me down for any medication to be transferred they saying that I refuse transfer.

THE COURT: I'll sign an order today to see that you get medical treatment. All right. The case is going to be continued on the State's motion."

¶ 8 During closing arguments, defense counsel commented that defendant "has some issues with respect to mental health," and the court interjected, "Are you saying your client needed to be BCXed again?" Defense counsel answered "no" and explained that her comment was in response to the State's argument that defendant should have been able to hear something notwithstanding the victim's trial testimony that defendant was asleep and possibly heavily medicated from being in the hospital for drug treatment when she was attacked by another man.

¶ 9 Following his conviction for aggravated domestic battery, defendant filed a *pro se* motion for a new trial and attached a complaint which he had filed against defense counsel with the Illinois Attorney Registration and Disciplinary Commission (ARDC). On December 1, 2011, the court addressed defendant regarding his claim of ineffective assistance of counsel, then directly questioned defense counsel regarding each allegation "because [defendant] can't really focus, for whatever reason."

¶ 10 Defense counsel explained that she did not call defendant's therapist and psychiatrist, or subpoena his medical records because she was not presenting an insanity or drug intoxication

defense; rather, the defense at trial was that the victim lied at defendant's preliminary hearing. Defense counsel added that she spoke numerous times with defendant before trial and defendant ultimately decided not to testify. In rejecting defendant's *pro se* allegations of ineffective assistance of counsel, the court found that defense counsel had good reasons for the decisions she made and expressed its disbelief in defendant's claim that he has a "problem with noise," and simply answered "yes" when asked if he wanted a bench trial because "I heard my public defender say yes." The court then heard argument on defense counsel's motion for a new trial, which it denied, and proceeded to sentencing.

¶ 11 During sentencing, defense counsel highlighted several mitigating factors concerning defendant's lifetime struggle with mental illness as set forth in the presentence investigation report (PSI). Defense counsel pointed out that defendant had a history of severe childhood head injuries, that he was diagnosed with bipolar disorder as a child and was undergoing drug treatment for heroin addiction at the time of the offense. Before pronouncing sentence, the court acknowledged defendant's history of head injuries, but noted that defendant was examined by a clinical psychologist and found fit to stand trial. The court added that defendant's behavior throughout the proceedings indicated "his agitated state and his inability to accept what is going on in his life."

¶ 12 On January 10, 2012, the parties appeared in court pursuant to defense counsel's motion to reconsider the sentence, and defendant apologized for his behavior, telling the court that he was "feeling a little more calmer" because he had been taking his medication. After hearing the arguments of respective counsel, the court denied defendant's motion.

¶ 13 In this appeal, defendant contends that the trial court committed reversible error by failing to conduct a fitness hearing *sua sponte* and, relatedly, that defense counsel was ineffective for failing to request a fitness hearing. He argues that the record contains ample evidence that a

bona fide doubt of his fitness existed to trigger the trial court's obligation to conduct a fitness hearing and to prompt defense counsel to request one.

¶ 14 Defendant acknowledges that he failed to raise this issue in the trial court, but maintains that it may be reviewed as plain error because fitness to stand trial concerns a substantial right, citing *People v. Contorno,* 322 Ill. App. 3d 177, 180 (2001). The State initially responds that second-prong plain error review, *i.e.*, whether the error was so serious to deny defendant a fair trial, does not apply to reach the forfeited issue because fitness for trial does not fall into the very limited class of structural errors recognized by the supreme court in *People v. Thompson,* 238 Ill. 2d 598, 613-14 (2010), and thus, plain error review does not save defendant's claim. Notwithstanding, the State acknowledges this court's recent decision in *People v. Moore,* 408 Ill. App. 3d 706, 710 (2011), where defendant's argument regarding his fitness to stand trial was reviewed under the second prong of the plain error doctrine.

¶ 15 To obtain relief under the plain error rule, defendant must first show that a clear or obvious error occurred. *People v. Hillier,* 237 Ill. 2d 539, 545 (2010). Under the second prong, defendant must then prove that the error was so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process. *Moore,* 408 Ill. App. 3d at 710 (citing *People v. Herron,* 215 Ill. 2d 167, 187 (2005)). Where defendant fails to present an argument on how either of the two prongs of the plain error rule is satisfied, he forfeits plain-error review. *Hillier,* 237 Ill. 2d at 545-46.

¶ 16 The due process clause of the fourteenth amendment (U.S. Const., amend. XIV) prohibits the prosecution of a defendant unfit to stand trial. *People v. Weeks,* 393 Ill. App. 3d 1004, 1008 (2009). A defendant is presumed fit to stand trial and is considered unfit if he is unable to understand the nature and purpose of the proceedings against him or to assist in his own defense

because of his mental or physical condition. 725 ILCS 5/104-11(a) (West 2010); *Weeks,* 393 Ill. App. 3d at 1008.

¶ 17 When facts are brought to the trial court's attention that raise a *bona fide* doubt as to defendant's fitness, the court has a duty to order a fitness hearing *sua sponte* to resolve the question. 725 ILCS 5/104-11(a) (West 2010); *People v. Tolefree,* 2011 IL App (1st) 100689, ¶ 56. A *bona fide* doubt exists if there is a " 'real, substantial and legitimate doubt' " assessed against an objective standard. *Tolefree,* 2011 IL App (1st) 100689, ¶ 56 (quoting *People v. Eddmonds,* 143 Ill. 2d 501, 518 (1991)).

¶ 18 That said, we note that fitness to stand trial and mental illness are not synonymous. *Weeks,* 393 Ill. App. 3d at 1009-10. Thus, the fact that a defendant had some history of "mental treatment, not mental illness" has been found insufficient to create a *bona fide* doubt regarding the narrower issue of his fitness to stand trial (*People v. Hill,* 308 Ill. App. 3d 691, 707-08 (1999)), and the fact that a defendant was taking psychotropic medications, alone, has also been found insufficient to trigger the trial court's duty to order a fitness hearing *sua sponte* (*People v. Vallo,* 323 Ill. App. 3d 495, 504-05 (2011); 725 ILCS 5/104-21(a) (West 2010)). In addition, "[e]vidence of defendant's disruptive behavior and a sociopathic personality does not necessarily show a *bona fide* doubt of defendant's fitness to stand trial (*People v. Smith,* 253 Ill. App. 3d 948, 953 (1993)), and "[e]ven evidence of extreme disruptive behavior does not compel the conclusion that a *bona fide* doubt exists as to a defendant's fitness to stand trial" (*People v. Steppan,* 322 Ill. App. 3d 620, 629 (2001)).

¶ 19 In this case, defendant cites the following as support for his assertion that the record contains ample evidence indicating that a *bona fide* doubt of his fitness existed: a history of mental illness dating back to his childhood, including a diagnosis of bipolar disorder and need for medication; he informed the court on several occasions that he was not receiving the

psychotropic medication he was normally prescribed for bipolar disorder; that he remained off of that medication during the entire trial and sentencing proceeding; and his communication with the court on many occasions was "disjointed, vague, and confused."

¶ 20 The *bona fide* doubt inquiry focuses on whether defendant is able to understand the nature and purpose of the proceedings and to assist in his defense (*People v. McCallister,* 193 Ill. 2d 63, 110 (2000)), and our review of the record shows that defendant was not hindered in this regard despite the aforementioned bases. During sentencing, defense counsel highlighted that defendant had a history of severe childhood head injuries, that he was diagnosed with bipolar disorder as a child and was undergoing drug treatment for heroin addiction at the time of the offense. Nonetheless, the court stated that defendant's behavior throughout the proceedings indicated "his agitated state and his inability to accept what is going on in his life," as opposed to an inability to understand the nature and purpose of the proceedings and to assist in his defense. Defendant's agitation and inability to accept the circumstances are indicative of his lack of comprehensive knowledge of the law and principles of criminal procedure, and not indicative of his lack of understanding of the nature and purpose of the proceedings against him. "[E]ven accepting that defendant's behavior was at times 'belligerent,' this does not suggest any impairment in his ability to understand the nature of the proceedings or participate in his defense." *People v. Burt,* 205 Ill. 2d 28, 43 (2001).

¶ 21 Relatedly, defendant surmises that had either the court or defense counsel "actually read the report–had either done so, then the fact that it stated that [defendant] was not suffering from a mental condition and was not prescribed any psychotropic medications should have caused them to question the opinion's reliability in light of the numerous previous reports that [defendant] was bipolar and was prescribed psychotropic medication." He maintains that Dr. Neu's lack of awareness of his bipolar diagnosis and his need for medication substantially undermined his

conclusions and makes the court's continued reliance on them even more troubling. Aside from his notable failure to include the psychiatric summary in the common law record on appeal, defendant waived appellate review of this challenge to the sufficiency of the psychiatric summary where he failed to raise the issue at trial or in his posttrial motion. *People v. Rogers,* 263 Ill. App. 3d 120, 131 (1994).

¶ 22 Additionally, we are compelled to point out that in making this argument, defendant has inappropriately taken Dr. Neu's findings out of context. Dr. Neu's report does not indicate that Dr. Neu was "unaware of defendant's bipolar diagnosis." Contrary to defendant's assertions, Dr. Neu did not find that defendant was not suffering from a mental condition. To the contrary, Dr. Neu stated, "[h]e is not suffering from a mental condition *that would compromise his ability to understand the nature of the proceedings against him or to assist in his defense*." Citing only a portion of that sentence to fashion the argument that Dr. Neu was unaware of defendant's bipolar diagnosis does not accurately reflect the record. Further, Dr. Neu's statement that, "[h]e is not presently prescribed any psychotropic medications" accurately described the state of affairs at the time he saw defendant, that is, that defendant was not receiving psychotropic medications while in custody. The record reflects that on several occasions, defendant told the court that he was not receiving medications during his pretrial detention. Notably, it was while defendant was in this unmedicated state that Dr. Neu determined that he was fit for trial.

¶ 23 Lastly, a thorough review of the record shows that the court and defendant had several conversations during both the pretrial and posttrial proceedings. During the pretrial phase, the court and defendant had discussions concerning his attempt to communicate with the court by mail, as well as his insistence that he receive a speedy trial and that he was innocent. During the posttrial proceedings, the court conducted an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), as a result of defendant's filing of a *pro se* motion for a new trial as well as an ARDC

complaint against his trial lawyer. During these conversations, defendant discussed with the court his several complaints with regard to representation, including that his attorney did not visit him, that he was not adequately prepared for trial, that witnesses were not called or contacted who should have been called or contacted, and that his attorney did not discuss with him his wishes to waive jury or to testify. A review of these conversations did not reveal any instance that would lead to the conclusion that defendant did not understand the nature of the proceedings against him or that he could not assist in his defense. Accordingly, we find that defendant has failed to establish error by the court or defense counsel regarding further inquiries into his fitness for trial to warrant plain error review.

¶ 24 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.